



DAC
afw

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE MATTER OF:

REISSUE OF: U.S. PATENT NO. 5,996,948

NAME OF PATENTEE: ROBERT SKVORECZ

ISSUED: DECEMBER 7, 1999

TITLE OF INVENTION: WIRE CHAFING STAND

SERIAL NO.: 09/772,278

PETITION TO DIRECTOR OF THE USPTO UNDER 37 CFR 1.181

Commissioner for Patents
P.O. Box 1450
Arlington, VA 22313-1450

S I R:

This is a petition under 37 CFR 1.181 to invoke the supervisory authority of the Director of Group 3600 to have a declaration filed by applicant made of record in the pending appeal of the subject reissue application. Any fee for this petition should be deducted from our Deposit Account No. 01-1944.

This application was under appeal in March 2003 and withdrawn from appeal by the Examiner for purpose of citing new prior art and making a new rejection upon which a final rejection was issued on December 30, 2003. The Examiner made an allegation concerning the operation of the cited reference in the final rejection upon which a novelty rejection under 35 USC 102 was based.

In partial response to the final rejection, applicant submitted an executed declaration under 35 USC 132 as evidence of the impossibility of the cited reference to operate as now alleged by the Examiner. A copy of the executed declaration and notice of appeal is attached hereto.

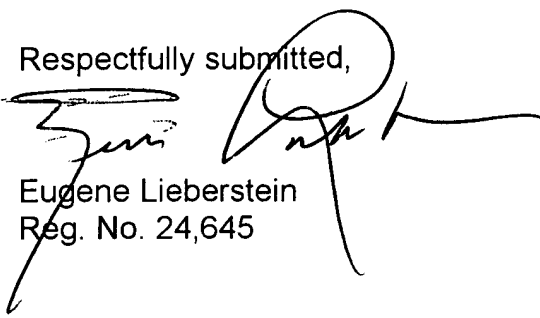
The Examiner has now issued an "Advisory Action before the filing of an appeal brief", refusing to enter the declaration submitted by applicant based upon a checked off box stating that "applicant failed to provide a showing of good and sufficient reasons why it is necessary and not earlier presented".

The accompanying declaration of applicant is evidence of the impossibility of the cited reference to function as alleged by the Examiner in the final rejection. Accordingly, it is essential that the declaration be made of record for consideration by the Board of Appeals in making a determination relative to the issue of novelty under 35 USC 102. The declaration addresses an interpretation of the Examiner of the cited reference not presented in the first Office Action and accordingly the filing of the declaration attesting to the impossibility of the reference to function as is now alleged by the Examiner could not have been presented earlier.

There is no reasonable or logical explanation for the Examiner to refuse to enter this declaration for consideration by the Board of Appeals. As indicated above, this application was under an earlier appeal and withdrawn by the Examiner, causing a delay of over four years in the consideration of this reissue application from the date of filing. It would be a grievous injustice to applicant to require applicant to re-file the application at this stage, in order to make the declaration of applicant of record.

Applicant requests that the accompanying declaration be made of record to enable applicant to contest the new interpretation of the cited reference by the Examiner in order to substantiate the novelty of the subject invention as claimed in the reissue application.

Respectfully submitted,

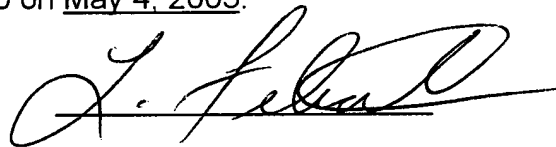


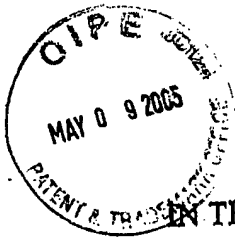
Eugene Lieberstein
Reg. No. 24,645

ANDERSON, KILL & OLICK
1251 Avenue of the Americas
New York, New York 10020-1182
(212) 278-1000

MAILING CERTIFICATE

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 4, 2005.





IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE MATTER OF:

REISSUE OF U.S. PATENT NO. 5,996,948

NAME OF PATENTEE: ROBERT SKVORECZ

ISSUED: DECEMBER 7, 1999

TITLE OF INVENTION: WIRE CHAFING STAND

DECLARATION OF PATENTEE UNDER 37 CFR 1.132

Assistant Commissioner of Patents
& Trademarks
Washington, DC 20231

S I R:

As the sole owner and patentee of the entire interest of U.S. Patent No. 5,996,948, I hereby declare that:

(1) I have a mechanical engineering degree and represent the first inventor of a wire chafing stand for supporting a warming pan of pre-cooked food which I have successfully commercialized into a multi-million dollar business. I possess a thorough knowledge of the invention in the reissue application of the subject patent '948 and have studied the reference US Patent Number 5, 503, 062 ("Eff '062") cited by the patent Examiner in rejecting the claims 1, 2 and 5 of the subject reissue application as being anticipated under 35 USC 102(b) in view of the teaching of this reference.

NYDOCS1-522601.3

(2) Claim 1 of patent '948 and the subject reissue application of which claims 2 and 5 depend includes the limitation---"a plurality of offsets located either in the upright sections of said wire legs or in said first rim for laterally displacing each wire leg relative to said first rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging"---.

(3) The Examiner has elected to interpret reference items 52 in Buff '062 as representing "offsets" corresponding to the claimed "offsets" and has alleged that Buff '062 teaches "a plurality of offsets 52 located either in the upright sections of the wire legs 50 or in said first rim 40 for laterally displacing each wire leg 50 relative to said first rim 40 to facilitate the nesting of a multiplicity of stands into one another without significant wedging" exactly as is taught in the subject patent and reissue application of applicant. The Examiner has further stated that Buff '062 teaches in Column 5 lines 13-16 and lines 30-34 that the offsets can facilitate the nesting of a multiplicity of stands into one another'.

(4) The cited reference Buff '062 teaches a support structure (reinforcing assembly 10) for a disposable aluminum roasting pan in which turkeys can be roasted in an oven at high temperature. The reinforcing assembly 10 (hereafter "support structure") is an assembly including an outer support frame 20 and an internal support rack 12. The outer support frame 20 as shown in Figure 2 is itself composed of both an upper support wire 40 which surrounds the sidewall of the roasting pan 16 and a lower support wire 42. The upper support wire 40 and the lower support wire 42 have criss-crossing members 48 and 49 which intersect at intersecting points 58 where the members are attached to one another and have upwardly extending frame support members 50 on opposite sides of the pan 16 which serve as legs. The upstanding frame support members 50 are bent over the upper support wire 40 to form bends 52 and handles 38. The bends 52 permit placement of the roasting pan 16 upon or in the outer support frame 20.

The Examiner elects to equate the bends 52 in the outer support frame 20 of Buff '062 as equal to the "offsets" in claim 1 both in structure and function and to equate the outer support frame 20 of the Buff '062 assembly to the "stand" in claim 1. This is not possible; i.e., it is mechanically impossible to nest a multiplicity of the "outer support frames 20" of Buff '062 into one another without significant wedging as called for in claim 1. The reason for this is as follows:

(a) The alleged "off-sets" 52 in Buff '062 are formed by bending over the upstanding frame support members 50 over the upper support wire 40 and therefore cannot function to laterally displace the legs 50 relative to the wire 40 as called for in claim 1 of applicants patent and reissue application. In applicants claim 1 and in the patent specification the offsets must cause a lateral displacement of each wire leg relative to the upper (first) rim to facilitate nesting of a multiplicity of stands into one another without significant wedging. A "lateral" displacement can only physically occur in accordance with claim 1 when the plurality of offsets laterally displace the position of each wire leg relative to the first rim. In addition, and as explained in column 4 lines 7-24, a lateral displacement must be caused to occur in each of the wire leg(s) in a substantially horizontal direction from a predetermined location below the upper (first) rim. In Buff '062 the so called offsets 52 are located only at the opposite longitudinal ends of the outer support frame 20 and therefore cannot cause a lateral displacement of each wire leg 50 relative to the upper (first) rim and the bends 52 will not accommodate a nesting of outer support frames 20. In Buff '062 the wire legs 50 on the opposite sides of the roasting pan 16 do not have bends 52 and this would cause serious interference if one attempted to nest a multiplicity of outer support frames 20 into one another. Moreover, because the so called offsets or bends 52 in Buff '062 are formed by bending the upstanding frame support members 50 over the upper support wire 40 they are, by definition, located over the upper support wire 40 and, as such, cannot cause a "lateral" displacement of each wire leg relative to said first rim nor will they facilitate the nesting of a multiplicity of stands into one another without significant wedging" as is required in

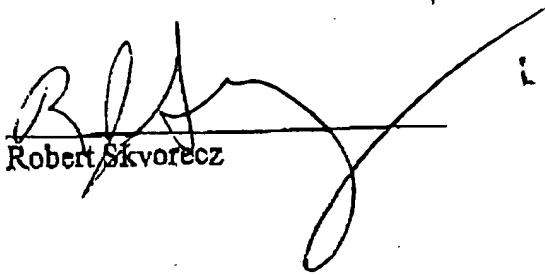
claim 1 and as explained in the patent specification. In addition, claim 1 requires the offsets to be located either in the upright sections of said wire legs or in said first rim. It is not possible for the bends 52 in Buff '062 to be located in the first rim, i.e., in wire 40 since they are formed over the wire 40. Thus, for all of above reasons the construction of Buff '062 does not teach "a plurality of offsets located either in the upright sections of said wire legs or in said first rim for laterally displacing each wire leg relative to said first rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging" ---.

(b) The statement of the Examiner that Buff '062 "teaches in Column 5 lines 13-16 and lines 30-34 that the offsets "52" can facilitate the nesting of a multiplicity of stands into one another is totally false. Buff '062 does not address or mention the subject of nesting of a stand, which would correspond in Buff '062 to nesting the support structure, i.e., the reinforcing assembly 10, into one another or does Buff '062 suggest even the possibility of nesting the outer support frames 20 by themselves into one another. To the contrary, Buff '062 in Column 5 lines 13-16 and lines 30-34 directly teaches and addresses the need for a stop for the roasting pan 16 to be nested upon or in and nothing else. Column 5 lines 15-16 specifically uses the words--"in order to facilitate nesting of a disposable aluminum foil roasting pan therein" --and so does lines 30-34 of column 5. No mention whatsoever is made of nesting one wire support stand into another which is what claim 1 in applicant's patent addresses and solves to enable the transportation of chafing stands at minimal cost. This is accomplished in the chafing stand of the subject patent and reissue patent application through the use of --"a plurality of offsets located either in the upright sections of the wire legs or in said first rim for laterally displacing each wire leg relative to said first rim to facilitate the nesting of a multiplicity of stands into one another without significant wedging". In fact the claim language specifically calls for nesting of stands into one another and not the nesting or placement of the pan into the support structure.

(c) The reinforcing assembly 10 taught by Buff '062 forms a support structure to support a disposable aluminum roasting pan for roasting turkeys in an oven and specifically teaches that the reinforcing assembly 10 consists of both an outer support frame 20 and an internal support rack 12 in combination. The Examiner has elected to ignore the internal support rack 12 as being non-existent or irrelevant. Instead in Buff '062 the internal support rack 12 is an integral part of the support structure of Buff '062. In addition, nothing in Buff '062 supports the contention that the outer support frame 20 can be used by itself as a chafing stand or can be nested into one another. Accordingly, Buff '062 does not teach or contemplate nesting a multiplicity of reinforcing assemblies 10 or teach segregating the outer support frame 20 from the internal support rack 12 in order to nest them.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

March 8th 2005
Date


Robert Skvorecz